

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4699 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HAMENDRA OIL MILL

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR CH VORA for Petitioner
MR Dave for Mr. AD OZA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 14/09/2000

ORAL JUDGEMENT

#. Heard Mr. C.H.Vora learned counsel on behalf of the petitioner and Mr. Dave for Mr. A.D.Oza learned counsel on behalf of the respondent Gujarat Electricity Board

(hereinafter referred to as the Board).

#. On an allegation of theft of power, the electricity line in the premises of the petitioner was disconnected by the respondent Board on 28.11.1994 and a supplementary bill for a sum of Rs. 13,46,456.00 has been raised for payment by the petitioner. Aforesaid supplementary bill is raised because of the allegation of theft of power by the petitioner. Having felt aggrieved by the said supplementary bill, the petitioner moved the Appellate Committee of the respondent Board and the Appellate Committee reduced the supplementary bill by a sum of Rs.3,52,860.00. Having felt aggrieved by the decision of the Appellate Committee, the petitioner filed SCA No. 8061 of 1997 before this Court and this Court after hearing the parties directed the Appellate Committee to review its judgment. Accordingly the Appellate Committee decided the appeal being Appeal No. H-9/98 afresh by its judgment and order dated 30.10.1998. It is held by the Appellate Committee that the allegation of theft has not been proved against the petitioner and accordingly the Appellate Committee set aside the supplementary bill preferred by the Board for Rs. 13,46,456.00. The decision of the Appellate Committee reached its finality and the Board had filed a money suit against the petitioner in the Civil Court which was withdrawn. Thereafter on 11.3.1999 the respondent Board preferred a bill for Rs. 68,350.00 as minimum charges from December 1994 to December 1999. The Board also directed the petitioner to pay additional sum of Rs. 9,577/- as delayed payment of the minimum charges. Accordingly a bill for Rs. 77,927.00 has been raised against the petitioner.

#. Having felt aggrieved by the aforesaid decision the petitioner has filed the present petition claiming a relief that since the power line was disconnected by the respondent Board he is not liable to pay minimum charges. Mr. Dave learned counsel on behalf of the respondent Board submitted that as per the terms of the agreement the petitioner is liable to pay minimum charges whether he uses power or not. It is also submitted by Mr. Dave learned counsel on behalf of the respondent Board that after permanent disconnection, the respondent Board is not entitled to realise the minimum charges. It is submitted by the learned counsel on behalf of the respondent Board that the minimum charges would be claimed for the period during which the power line was temporarily disconnected by the respondent Board. I cannot agree with the submission of Mr. Dave learned counsel on behalf of the Board because in the instant

case the power line was disconnected from the premises of the petitioner on the allegation of theft of power. The charge of theft of power has not been proved by the respondent Board and the Appellate Committee in its judgment and order dated 30.10.1998 has clearly held that the charge of theft of power against the petitioner has not been proved. In view of the aforesaid finding of the Appellate Committee, I am of the view that the temporary disconnection made by the respondent Board in the premises of the petitioner was wholly unjustified and therefore, the petitioner cannot be held to be responsible for payment of minimum charges when there was no power line in the premises of the petitioner. However, had the respondent Board been successful in proving the charge against the petitioner, they could have claimed minimum charges even after temporary disconnection. In view of the aforesaid observations, I am of the view that the petitioner is not liable to pay minimum charges as claimed by the respondent Board against the bill for a sum of Rs. 77,927/-. However if the petitioner seeks for fresh connection, then the Board may consider the same after realising the necessary charges. In the circumstances, the petition is allowed. Rule is made absolute. No order as to costs.

(P.K.Sarkar.J)

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